

§ 36C-2-205. Commencement of proceedings, pleadings, consolidation, and joinder.

(a) Contested Proceedings. – Trust proceedings before the clerk of superior court brought against adverse parties shall be commenced as is prescribed for civil actions. Upon the filing of the petition or complaint, the clerk of superior court shall docket the cause as an estate matter. All parties not joined as petitioners shall be joined as respondents. The clerk of superior court shall issue the summons for the respondents. The clerk of superior court may order that additional persons be joined as respondents and shall issue the summons for the additional persons. The summons shall notify the respondents to appear and answer the petition within 10 days after its service upon the respondents. The summons shall comply with the requirements set forth in G.S. 1-394 for a special proceeding summons except that the clerk of superior court shall indicate on the summons by appropriate words that the summons is issued in an estate matter and not in a special proceeding or in a civil action and shall be served upon the respondents in accordance with Rule 4 of the Rules of Civil Procedure. After the time for responding to the petition or complaint has expired, any party or the clerk of superior court may give notice to all parties of a hearing.

(b) Uncontested Proceedings. – Trust proceedings before the clerk of superior court in which all the parties join in the proceeding shall be commenced by the filing of a petition, setting forth the facts entitling the petitioners to relief and the nature of the relief demanded. In these proceedings, the clerk of superior court may hear and decide the petition summarily.

(c) Pleadings. – The petition or complaint filed in a trust proceeding before the clerk of superior court shall contain a short and plain statement of the claim which is sufficiently particular to give the court and the parties notice of the transactions, occurrences, or series of transactions, intended to be proved showing that the pleaders entitled to relief, and a demand for judgment for the relief to which the pleader is entitled. Each averment of a pleading should be simple, concise, and direct. No technical forms of pleadings or motions are required. A party may set forth two or more statements of a claim or defense alternatively or hypothetically. The signature of an attorney or party constitutes a certificate by that attorney or party that (i) the attorney or party has read the pleading, motion, or other paper; (ii) to the best of the attorney's or party's knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and (iii) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. All pleadings shall be so construed as to do substantial justice.

(d) Extensions of Time. – The clerk of superior court, for cause shown at any time in the clerk's discretion, with or without motion or notice, may enter an order enlarging the period of time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, if the request is made before the expiration of the period originally prescribed, but not to exceed 10 days, except to the extent that the court finds that justice requires that the time be enlarged for a period of greater than 10 days. Upon motion made after the expiration of the specified period, the clerk of superior court may permit the act where the failure to act was the result of excusable neglect. Notwithstanding any other provision of this subsection, the parties to a proceeding may enter into binding stipulations, without approval of the clerk of superior court, enlarging the time within which an act is required or permitted by this Article, by any applicable Rules of Civil Procedure or by order of the court, not to exceed 30 days.

(e) Rules of Civil Procedure. – Unless the clerk of superior court otherwise directs, G.S. 1A-1, Rules 4, 5, 6(a), 6(d), 6(e), 18, 19, 20, 21, 24, 45, 56, and 65 of the Rules of Civil Procedure shall apply to trust proceedings. Upon motion of a party or the clerk of superior court, the clerk may further direct that any or all of the remaining Rules of Civil Procedure,

shall apply, including, without limitation, discovery rules; however, nothing in Rule 17 requires the appointment of a guardian ad litem for a party represented except as provided under G.S. 36C-2-206. In applying these Rules to a trust proceeding pending before the clerk of superior court, the term "judge" shall be construed as "clerk of superior court."

(f) Consolidation. – When a trust proceeding pending before the clerk of superior court and a civil action pending before the superior court division of the General Court of Justice involve a common question of law or fact, upon the court's motion or motion of a party to either the trust proceeding or the civil action, a superior court judge may order a consolidation of the trust proceeding and civil action, and the judge may make orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. Upon the entry of an order consolidating a trust proceeding and civil action, the jurisdiction for all matters pending in both the trust proceeding and the civil action shall be vested in the superior court.

(g) Joinder. – In any civil action pending before a superior court division of the General Court of Justice, a party asserting a claim for relief as an original claim, counterclaim, cross-claim, or third-party claim, may join, either as independent or as alternate claims, as many claims, legal or equitable, as that party has against an opposing party notwithstanding the fact that the claims may otherwise be within the exclusive jurisdiction of the clerk of superior court.

(g1) Notice of Transfer. – A notice to transfer a trust proceeding brought pursuant to G.S. 36C-2-203(a)(9) must be served within 30 days after the moving party is served with a copy of the pleading requesting relief pursuant to G.S. 36C-2-203(a)(9). Failure to timely serve a notice of transfer of a trust proceeding is a waiver of any objection to the clerk of superior court's exercise of jurisdiction over the trust proceeding then pending before the clerk. When a notice of transfer is duly served and filed, the clerk shall transfer the proceeding to the appropriate court. The proceeding after the transfer is subject to the provisions of the General Statutes and to the rules that apply to actions initially filed in the court to which the proceeding was transferred.

(h) Orders Upon Consolidation/Joinder/Transfer. – Upon the consolidation of a trust proceeding and a civil action, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice pursuant to subsection (g1) of this section, the clerk of superior court or the judge may make appropriate orders to protect the interests of the parties and to avoid unnecessary costs or delay. Notwithstanding the consolidation, joinder of claims under subsection (f) or (g) of this section, or transfer to the Superior Court Division of the General Court of Justice under subsection (g1) of this section, the clerk of superior court's exclusive jurisdiction as set forth in G.S. 36C-2-203(a)(1) through (8) shall not be stayed unless so ordered by the court.

(i) Notice to Attorney General. – In every trust proceeding with respect to a charitable trust, the Attorney General shall be notified and given an opportunity to be heard. (2005-192, s. 2; 2007-106, ss. 9, 9.1, 10; 2011-344, ss. 11, 12; 2012-18, s. 3.11.)